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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 DWIGHT BENSON,

8 Plaintiff,

9 v.

10 PIERCE COUNTY JAIL, *et al.*,

11 Defendants.

Case No. C08-5407 BHS/KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS

NOTED FOR:
October 10, 2008

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13 This case has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28
14 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. §
15 1983 and an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings,
16 plaintiff must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*.
17 Plaintiff's application was deficient as the Court was unable to determine his eligibility for *in forma*
18 *pauperis* status based on the information submitted by Plaintiff. Accordingly, Plaintiff was ordered to
19 show cause why his application should not be dismissed. (Dkt. # 4). Plaintiff has not responded to the
20 Court's Order.

21 **I. DISCUSSION**

22 The court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper
23 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an
24 application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
25 375 U.S. 845 (1963).

26 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when
27 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*,
28 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*

1 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),
2 *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

3 On July 26, 2008, Plaintiff filed his motion to proceed *in forma pauperis*. (Dkt. # 1). Upon
4 review of his application, the Court noted that Plaintiff indicated he receives \$2,596.00 per month in
5 Veteran's Administration disability benefits. (Dkt. # 1, p. 2). Plaintiff was ordered to show cause why
6 the Court should not consider these funds in determining Plaintiff's eligibility for *in forma pauperis*
7 status. (Dkt. # 4). Plaintiff also indicated in his application that he was currently incarcerated in "Pioneer
8 Center North" (Dkt. # 1, p. 1), but on the same day that he filed his application, he provided the Court
9 with a change of address, reflecting a new address at 336 27th Avenue, in Seattle, Washington. (Dkt. # 2).
10 Accordingly, Plaintiff was also ordered to advise the Court of his current incarceration status. (Dkt. # 4).
11 Plaintiff was given until August 25, 2008 to respond to the Court's Order to Show Cause. *Id.* To date,
12 Plaintiff has not responded nor requested an extension of time within which to respond.

13 II. CONCLUSION

14 Because Plaintiff has failed to respond to the Court's order to show cause regarding his need to
15 pay the court filing fee or file a proper application to proceed *in forma pauperis*, the undersigned
16 recommends the court dismiss Plaintiff's Complaint unless he pays the required \$350.00 fee **within thirty**
17 **(30) days** of the Court's order.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties shall
19 have ten (10) days from service of this Report and Recommendation to file written objections thereto. *See*
20 *also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of
21 appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P.
22 72(b), the Clerk is directed to set this matter for consideration on **October 10, 2008**, as noted in the
23 caption.

24 Dated this 23rd day of September, 2008.

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26 
27 Karen L. Strombom
28 United States Magistrate Judge